

## **REMARKS**

### **I. Status of Claims**

Claims 19-82 are currently pending. Claims 19, 57, 64, 74, and 82 are amended herein to recite that the composition “has a viscosity of less than or equal to 1,000 cP.” Claims 57, 64, and 74 are further amended to recite a “liquid” composition. These amendments are supported by the specification as originally filed, for example, at p. 3, ll. 13-18. Accordingly, no new matter has been added.

### **II. Rejections Under 35 U.S.C. § 103(a)**

The Examiner rejected claims 20, 27-33, 52-54, 56-58, 61, 64-66, 69, 72-76, 79, and 82 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,110,450 to Bergmann (“*Bergmann*”) in view of U.S. Patent No. 5,198,210 to Critchley et al. (“*Critchley*”). Office Action at 2. Claims 21-26, 34, 59, 60, 67, 68, and 77-78 are rejected under 35 U.S.C. § 103(a) as unpatentable over *Bergmann* in view of *Critchley*, and further in view of U.S. Patent No. 6,312,674 to Maubru et al. (“*Maubru*”). *Id.* at 3-4. Claims 35-51, 62, 63, 70, 71, 80, and 81 are rejected under 35 U.S.C. § 103(a) as unpatentable over *Bergmann* in view of *Critchley* and *Maubru*, and further in view of U.S. Patent No. 6,120,757 to Dubief et al. (“*Dubief*”). *Id.* at 5. Finally, the Examiner rejected claims 35-51, 55, 62, 63, 70, 71, 80, and 81 under 35 U.S.C. § 103(a) as unpatentable over *Bergmann* and *Critchley* in view of U.S. Patent No. 5,587,155 to Ochiai et al. (“*Ochiai*”). *Id.* at 6.

**A. Rejection Over *Bergmann* and *Critchley***

*Bergmann* relates to hair care compositions comprising at least one ceramide and/or glycosphingolipid and phytantriol. See abstract. *Bergmann* teaches a shampoo having a viscosity between 4,000 and 7,000 cps. See col. 8, ll. 42-43. *Bergmann* does not teach nor suggest a liquid cosmetic composition, as presently claimed.

*Critchley* relates to particular pseudoceramides, their synthesis, and their use in cosmetic compositions. See abstract. *Critchley* explicitly excludes liquid compositions. The compositions taught by *Critchley* "can be formulated as a lotion having a viscosity of from 4,000 to 10,000 mPas, a fluid cream having a viscosity of from 10,000 to 20,000 mPas or a cream having a viscosity of from 20,000 to 100,000 mPas, or above." Col. 17, ll. 21-26.

The Examiner alleges that "Critchley teaches cosmetic compositions for skin, hair and nails which contains [sic] synthetic ceramides and emollients such as isocetyl alcohol, stearyl alcohol and cetyl alcohol." Office Action at 3. The Examiner also alleges that *Critchley* "suggests the equivalence of these alcohols which are well known emollients in the art." *Id.* The Examiner further argues that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the compositions of *Bergmann* by substituting the stearyl alcohol and cetyl alcohol with isocetyl alcohol, as motivated by *Critchley*." *Id.* Applicants respectfully disagree with the Examiner's position and traverse this rejection for reasons of record and for the following additional reasons.

Applicants reiterate their arguments of record with respect to the lack of motivation to combine *Bergmann* and *Critchley*, as laid out in detail on pages 15-23 of

the Appeal Brief dated June 22, 2006. Furthermore, Applicants assert that both *Bergmann* and *Critchley*, alone or in combination, fail to teach all elements of the presently pending claims, as required to establish a *prima facie* case of obviousness. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Specifically, Applicants point out that neither *Bergmann* nor *Critchley* teach or suggest a liquid cosmetic composition having a viscosity of less than or equal to 1,000 cP, as presently claimed. As discussed in the instant specification:

Ceramides are generally formulated in thick compositions (cream or gel) containing thickeners with the aim of improving the stability and the suspension of the ceramides in aqueous compositions. Liquid products apply better to the hair and become homogeneously distributed. However, it is difficult to obtain stable aqueous liquid compositions, containing water-insoluble compounds such as ceramide-type compounds.

Instant specification at p. 2, ll. 1-9.

The present inventors have discovered that by using compositions comprising at least one cationic surfactant and at least one liquid fatty alcohol in combination with at least one ceramide compound, stable liquid compositions can be obtained, which exhibit substantial improvement in cosmetic performances both on wet hair and on dry hair. *Id.* at ll. 10-16. For example, cosmetic properties such as the property of lending suppleness and sleekness to the fibers with no increase in weight or with no greasy effect, of softness and of glossiness are superior to those of a composition containing a solid fatty alcohol generally used for improving the stability of compositions. *Id.* at ll. 17-26.

As discussed above, and in contrast to the present invention, both *Bergmann* and *Critchley* teach thickened compositions such as creams and gels comprising

ceramide and pseudoceramide compounds, respectively. Neither reference discloses or suggests liquid compositions, i.e., compositions having a viscosity of less than or equal to 1,000 cP, as presently claimed. Indeed, the teachings of *Bergmann* and *Critchley* would lead a skilled artisan away from liquid compositions comprising ceramides. Accordingly, *Bergmann* and *Critchley*, either alone or in combination cannot form a proper basis for a *prima facie* case of obviousness. As such, Applicants respectfully request that this rejection be withdrawn.

**B. Rejection Over *Bergmann*, *Critchley*, and *Maubru***

The Examiner acknowledges that “Bergmann and Critchley fail to teach the specific ceramides of the instant claims.” Office Action at 4. In an attempt to make up for this deficiency, *Maubru* is cited for the ceramides disclosed therein and their use in hair cosmetic compositions. *Id.* The Examiner states that it would have been obvious to modify “the compositions of the combined references by adding the ceramides of Maubru . . . because 1) both Bergman and Maubru teach using ceramides in oxidizing bleaching or permanently reshaping composition.” *Id.* at 4-5. Applicants respectfully disagree and traverse this rejection as applied to the presently pending claims.

*Maubru* is directed to compositions for bleaching or permanently reshaping the hair comprising at least one ceramide-type compound and at least one oxidizing agent. See abstract. Applicants submit that the Examiner has failed to set forth a *prima facie* case of obviousness at least for the reason that *Maubru* does not make up for the deficiencies in the combination of *Bergmann* and *Critchley*, as highlighted above. Specifically, Applicants reiterate their arguments of record that *Maubru* fails to cure the

lack of motivation and reasonable expectation of success in combining the teachings of *Bergmann* and *Critchley*, at least because of the lack of a structural similarity between the ceramides taught by *Bergmann* and the pseudoceramides taught by *Critchley*. See Appeal Brief filed June 22, 2006 at 24-25.

In addition, Applicants note that *Maubru* also fails to teach a liquid composition comprising at least one cationic surfactant, at least one liquid fatty alcohol, and at least one ceramide compound, wherein the composition has a viscosity of less than or equal to 1,000 cP, as presently claimed. Furthermore, Applicants assert that after reading the teachings of *Bergmann* and *Critchley*, which clearly teach away from liquid compositions, a skilled artisan would have no motivation to combine the teachings of *Bergmann*, *Critchley*, and *Maubru* to arrive at the presently claimed liquid compositions. Moreover, in light of the discussion above regarding the instability of ceramide compounds in liquid compositions, the skilled artisan could not have a reasonable expectation of success in achieving the presently claimed compositions. As such, a *prima facie* case of obviousness cannot rest on the combination of *Bergmann*, *Critchley*, and *Maubru*, and this rejection should be withdrawn.

**C. Rejection Over *Bergmann*, *Critchley*, *Maubru*, and *Dubief***

The Examiner acknowledges that the “combined references [*Bergmann* in view of *Critchley* and *Maubru*] fail to teach the specific cationic surfactants of the instant claims.” Office Action at 5. The Examiner attempts to rely on *Dubief* to make up for this deficiency. *Dubief* relates to a composition in the form of an aqueous dispersion comprising at least one liposoluble agent of the organosiloxane type containing a

benzalmalonate function and at least one water-insoluble cationic surfactant.” See abstract. *Dubief* teaches ultraviolet-screening, e.g., sun-screening, compositions for keratin fibers such as the hair. See *id.* *Dubief* further discloses that various optional additives, such as ceramides, may be included in such compositions. See col. 6, ll. 34-41.

Applicants submit that the Examiner has failed to set forth a *prima facie* case of obviousness at least for the reason that *Dubief* does not make up for the deficiencies in the combination of *Bergmann*, *Critchley*, and *Maubru*, as highlighted above. Specifically, Applicants note that *Dubief* also fails to teach a liquid composition comprising at least one cationic surfactant, at least one liquid fatty alcohol, and at least one ceramide compound, wherein the composition has a viscosity of less than or equal to 1,000 cP, as presently claimed. Furthermore, Applicants assert that after reading the teachings of *Bergmann* and *Critchley*, which clearly teach away from liquid compositions, a skilled artisan would have no motivation to combine the teachings of *Bergmann*, *Critchley*, *Maubru*, and *Dubief* to arrive at the presently claimed liquid compositions. Moreover, in light of the discussion above regarding the instability of ceramide compounds in liquid compositions, the skilled artisan could not have a reasonable expectation of success in achieving the presently claimed compositions. As such, a *prima facie* case of obviousness cannot rest on the combination of *Bergmann*, *Critchley*, *Maubru*, and *Dubief*, and this rejection should be withdrawn.

**D. Rejection Over *Bergmann*, *Critchley*, and *Ochiai***

The Examiner concedes that “*Bergmann* fails to teach 18-methyleicosanoic acid and quaternary ammonium cationic surfactants. Office Action at 6. The Examiner attempts to make up for this deficiency by relying on *Ochiai*. *Ochiai* teaches hair cosmetic compositions comprising at least one fatty acid, fatty acid salt, or fatty acid ester, at least one aromatic alcohol, and at least one cationic surfactant. See abstract. *Ochiai* does not mention or suggest compositions comprising ceramides.

Applicants submit that the Examiner has failed to set forth a *prima facie* case of obviousness at least for the reason that *Ochiai* does not make up for the deficiencies in the combination of *Bergmann* and *Critchley*, as highlighted above. Specifically, Applicants note that *Ochiai* is completely silent with respect to compositions comprising ceramides, much less liquid compositions comprising at least one cationic surfactant, at least one liquid fatty alcohol, and at least one ceramide compound, wherein the composition has a viscosity of less than or equal to 1,000 cP, as presently claimed. Furthermore, Applicants assert that after reading the teachings of *Bergmann* and *Critchley*, which clearly teach away from liquid compositions, a skilled artisan would have no motivation to combine the teachings of *Bergmann*, *Critchley*, and *Ochiai* to arrive at the presently claimed liquid compositions. Moreover, in light of the discussion above regarding the instability of ceramide compounds in liquid compositions, the skilled artisan could not have a reasonable expectation of success in achieving the presently claimed compositions. As such, a *prima facie* case of obviousness cannot rest on the combination of *Bergmann*, *Critchley*, and *Ochiai*, and this rejection should be withdrawn.

### III. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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By: \_\_\_\_\_



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